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4 Attorney for Defendant
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5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF NEVADA**

7 * * * *

8 UNITED STATES OF AMERICA,
9 Plaintiff,
10

Case Number: 2:14-cr-00127-KJD-
VCF

11 vs.

12 LUMSDEN QUAN,
13 Defendant.
14

**DEFENDANT'S SUPPLEMENTAL
SENTENCING MEMORANDUM**

15 This sentencing memorandum is aimed at urging the Court to impose a sentence less than
16 incarceration. The undersigned hereby submits this Supplemental Sentencing Memorandum on
17 behalf of Mr. Quan.

18 DATED this 10th day of December, 2015.

19 Respectfully submitted by,

20 /s/ Christopher R. Oram, Esq.
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1 **I. A SENTENCE LESS THAN INCARCERATION IS APPROPRIATE.**

2 On December 9, 2015, Mr. Quan filed his Sentencing Memorandum. On that same day,
3 the government filed their Sentencing Memorandum. In the government's Sentencing
4 Memorandum, they cite the following cases: United States v. James Hess (N.D. Iowa, 1:15-
5 CR-00041), United States v. Qiang Wang (S.D.N.Y., 1:13-CR-00452), United States v. Ning
6 Qui (E.D. Texas, 4:14-CR-00099), United States v. Xiao Guan (S.D.N.Y. 1:14-CR-00506)
7 United States v. Harris (S.D. Fla) and United States v. Michael Slattery (E.D.N.Y.). The
8 government cited these cases in an attempt to establish Mr. Quan should receive a sentence of
9 incarceration because the facts and circumstances of his case are similar to other defendants
10 who have been sentenced to incarceration.

12 After reviewing the government's sentencing memorandum, counsel for Mr. Quan
13 pulled the government's sentencing memorandum in United States v. James Hess. In the
14 government's memorandum in Hess, the government rationalized that the defendant was
15 deserving of a sentence of incarceration when compared to the defendants in United States v.
16 Harris, No. 14-cr-20354-MGC and United States v. Brommel, No. 15-cr-000520-WSS.

18 Specifically, the government argued:

19
20 First, defendant argues a Guidelines range sentence will result in
21 sentencing disparity. This argument is without merit as a Guidelines range
22 sentence in this case will not result in unwarranted sentencing disparity. In
23 crafting a sentence, one factor the Court must consider is "the need to avoid
24 unwarranted sentence disparities among defendants with similar records who
25 have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). Defendant
26 argues that his case is similar to two other Operation Crash cases where the
27 defendants were sentenced to probation. Defendant cites *United States v. Harris*,
28 from the Southern District of Florida, and *United States v. Brommel*, from the
Western District of Texas, in support of his argument. In *Harris*, the defendant
had an agreed to Guidelines range of 18 to 24 months, based upon a Lacey Act
violation involving black rhino horns, which included a 10 level enhancement
for market value. *United States v. Harris*, No. 14-cr-20354-MGC, Docket #21 at
1-2 (Defendant's Sentencing Memorandum) (S.D. Fla. Sept. 24, 2014). The
defendant in that case had no criminal history (*Id.*), was 76 years old at the time

1 of sentencing (*Id.* at 4), and was sentenced to three years probation. Harris, No.
 2 14-cr-20354-MGC, Docket #25 (S.D. Fla. Oct. 2, 2014). In *Brommel*, the
 3 defendant was convicted of false labeling/making a false record under the Lacey
 4 Act, an offense different than the offense in this case, though the charged
 5 conduct in *Brommel* also involved the interstate transportation of black rhino
 6 horns. *United States v. Brommel*, No. 15-cr-00020-WSS, Docket #1
 7 (Information) (W.D. Tex. Feb. 6, 2015). The defendant in *Brommel* also appears
 8 to have had no prior criminal history that resulted in any criminal history score
 9 being assessed to him. *Brommel*, No. 15-cr-00020-WSS, Docket #22
 10 (Government's Amended Sentencing Memorandum) (W.D. Tex. Aug. 24,
 11 2015). *Brommel* received five years probation. *Brommel*, No. 15-cr-00020-
 12 WSS, Docket #25 (W.D. Tex. Sept. 4, 2015).

13 Defendant and this case are distinguishable from *Harris* and *Brommel*.
 14 Here, defendant is a criminal history category 2 as result of previous convictions
 15 for an OWI and fifth degree theft in 1999. (PSR 32-33). He also has eight other
 16 convictions that did not result in any criminal history points, though six of those
 17 occurred in or before 1996 and the most recent was in 2014. (PSR 26-31, 34-
 18 35). Further, defendant in this case was involved in the sale of two sets of rhino
 19 horns, unlike the defendants in *Brommel* and *Harris*, who appear to each have
 20 been involved with only one set of illegally trafficked rhino horns. Further,
 21 defendant misled the seller of the August 2011 set of horns in Oregon into
 22 thinking defendant was brokering a deal between two Oregon residents and
 23 defendant even used the driver's license of someone who had no involvement in
 24 the deal in order to complete the transaction, all knowing he was going to bring
 25 the horns back to Iowa and ultimately to Wade Steffen. (PSR 7). Defendant's
 26 case is different from *Harris* and *Brommel* in both the nature of circumstances
 27 of the offenses and defendant's history and, therefore, a sentence of
 28 imprisonment in this case would not result in unwarranted sentencing disparity
 with the defendants in those cases.

20 Defendant also argues for a downward variance based upon his history
 21 and characteristics. While defendant may have been a good father and member
 22 of his community, he knowingly engaged in criminal conduct for personal
 23 profit. He deceived the Oregon seller of rhino horns into thinking he was selling
 24 the horns to another Oregon resident. Defendant sold two sets of rhino horns to
 25 Wade Steffen, knowing that Steffen was involved with Felix Kha, who was
 26 likely to ship the horns out of the United States. Under the statutory factors, a
 27 Guidelines range sentence in this case is warranted and the government
 28 recommends a sentence within the 27 to 33 month range (Government's
 Supplemental Memorandum Regarding Sentencing and Resistance to
 Defendant's Variance Motion, Doc. No. 23, p. 3-6).

27 A review of the government's argument in Hess establishes the government's belief that
 28 Hess was deserving of a sentence of incarceration because the circumstances of the offense and

1 his criminal history were different than the defendants in Harris and Brommel, who received
2 probation. Unlike the defendant in Hess, the defendants in Harris and Brommel had no prior
3 criminal history and thus received probation. Additionally, the government in the Hess case
4 argued he was not suited for probation when compared to Harris and Brommel because he was
5 involved in the sale of two rhinoceros horns, whereas the defendants in Harris and Brommel
6 only sold one horn.

8 In the instant case, as is demonstrated by the government's arguments in the Hess case,
9 Lumsden is much more similarly situated to the defendants in Harris and Brommel than the
10 defendant in Hess because he has no prior criminal history. Moreover, Lumsden was only
11 involved in the sale of one rhinoceros horn, unlike the defendant in Hess. Again, this
12 demonstrates Lumsden is similarly situated to the defendants in Harris and Brommel and
13 should receive a sentence less than incarceration.

15 Contrary to the government's position in their sentencing memorandum in the instant
16 case, Mr. Quan is not similarly situated to the defendant in Hess, but much more to that of the
17 defendants in Harris and Brommel, who received sentences of probation.

19 CONCLUSION

20 Therefore, based on the foregoing, Mr. Quan respectfully submits that a fair sentence
21 would be one less than incarceration.

23 DATED this 10th day of December, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of CHRISTOPHER R. ORAM, ESQ., and that
on the 10th day of December, 2015, I served a copy of the foregoing Sentencing Memorandum
by U.S. District Court CM/ECF Electronic Filing, to:

RYAN CONNORS
Ryan.Connors@usdoj.gov

/s/ Jessie Vargas
An Employee of Christopher R. Oram, Esq.